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By first class mail and e-mail
zwaymer@hlcommission.org

September 6, 2019

Zach Waymer, MPA
Manager for Governmental Affairs
Higher Learning Commission
230 S. Lasalle St., Suite 7-500
Chicago, IL 60604

Re: Wayne State University HLC inquiry

Dear Mr. Waymer:

As you will recall, by e-mail of April 16, 2019, you advised President M. Roy Wilson of Wayne State University that the Higher Learning Commission had received a number of complaints that WSU's Board of Governors may have acted in violation of Core Criterion II.C(4); that 'the Governing Board delegates day-to-day management of the institution ...' You requested a response to these allegations.

President Wilson consulted with our Board of Governors, which determined that it was not reasonably possible for the Board to investigate itself regarding such allegations, or for the President to do so, and so elected to proceed as follows:

- the investigation and response was delegated to the President, with the instruction that the President was to delegate it to me;
- there was to be a firewall between myself and the President and Board as to the conduct of the investigation;
- I was to retain outside counsel to conduct the actual inquiry;
- the outside counsel was to be an individual familiar with higher education but not having represented Wayne State University, its Board, individual Board members, or anyone who would be interviewed.

In compliance with these instructions, I retained Ms. Emily Pontius of the law firm of Fredrikson & Byron to conduct the inquiry and to report on her findings. Ms. Pontius and her law firm are located in Des Moines, Iowa, and had no prior engagement of any nature with Wayne State University or any individual interviewed.

Ms. Pontius interviewed more than 20 individuals, including the eight current Board members, two former Board members, the President of Wayne State University, and more than a dozen others. By prior agreement, nobody from Wayne State University took part in interviewing witnesses. The individuals she interviewed have not been identified by name in the report.

Ms. Pontius' report is attached. (See Attachment 1) As you will note, she has identified a number of instances which she has characterized as excessive or inappropriate Board engagement into administrative matters. Her findings indicate that almost all of these instances involve the same individual Board member. She has included in her report possible remedial measures for the Board's consideration.

As you will be aware, Michigan is one of a very few states in which the governing boards are truly autonomous; Individual Board members are chosen by statewide vote. There is no equivalent to a central or interuniversity governance structure. It is not within the scope of the elected Board's authority to engage in corrective measures against an errant member. Ms. Pontius's proposals are therefore primarily prospective and supportive in nature.

Thank you for your attention. Please feel free to contact me directly if you have questions regarding this report, or if I may be of further service.

Sincerely

A handwritten signature in black ink, appearing to read "Louis Lessem", with a stylized, flowing script.

Louis Lessem
Vice President and General Counsel

C: WSU Board of Governors
M. Roy Wilson, President
Emily Pontius
Stephanie Brzuzy

September 3, 2019

Mr. Louis Lessem
Vice President and General Counsel
Wayne State University
656 West Kirby
4249 Faculty Administration Bldg.
Detroit, MI 48202

Re: Investigation of HLC Complaints

Dear Mr. Lessem:

As you know, in April 2019, Wayne State University was notified that its accrediting agency, the Higher Learning Commission, had received anonymous complaints alleging interference by the Board of Governors in the day-to-day management of the University. Such interference would violate Accreditation Criterion 2 requiring governing boards to delegate day-to-day management of the institution to the administration.¹

The complaints were submitted to the Commission on February 20, 2019, and February 25, 2019.² The complaints included a narrative component and alleged the following categories of activities by one or more members of the Board of Governors:

- 1) Interference with the University's employment relationships;
- 2) Interference into the operations of the Office of International Students and Scholars; and
- 3) Interference into the University's internal audit of scholarships awarded to student athletes.

The Commission asked the University to investigate and respond to the complaints. In June 2019, the University engaged my firm to investigate whether the Board of Governors' conduct violated Accreditation Criterion 2, as alleged in the complaints.

¹ HLC Accreditation Criteria are available at <https://www.hlcommission.org/Policies/criteria-and-core-components.html> (last accessed August 23, 2019).

² The complaints, as received from the Higher Learning Commission, are attached as Exhibit A.

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We agreed the interviews would be conducted without witnesses from Wayne State University; that all current members of the Board of Governors would be asked for an interview; and that interviews would take place by telephone. We also agreed that Fredrikson and Byron would provide a final report to the University, but retain all investigation notes and documents.

Between July 9, 2019, and August 22, 2019, my colleague, Rhiannon Baker, and I interviewed twenty-four individuals, including all current members of the Board of Governors,³ believed to have knowledge relevant to the complaints. In each interview, it was explained that anonymous complaints had been submitted to the Higher Learning Commission alleging that the Board of Governors had violated Accreditation Criterion 2, which requires governing boards to delegate day-to-day management of the institution to the administration. Each witness agreed to participate and provide complete and honest information.

We asked each witness to provide any information within their personal knowledge that responded to the three categories of activities described above. If witnesses volunteered additional information that potentially implicated Accreditation Criterion 2, those topics were explored in the interviews. Witnesses were also asked to provide information they learned “second-hand” but were asked to identify how they obtained the information. When witnesses identified that they had emails or other documentation responsive to the areas of inquiry, they were asked to provide that documentation.

Based on the interviews and documentation, we conclude one current member of the Board of Governors has engaged in conduct that likely violates Accreditation Criterion 2. Our findings are described below.

I. Findings

A. Interference with the Office of International Students and Scholars

In 2018, a Board member took particular interest in a University employee with a unique immigration status. The Board member, dissatisfied with the action taken by the Office of International Students and Scholars (“OISS”), proposed the University retain an outside attorney to handle the employee’s immigration case. After consulting with the Associate Vice President for International Services, the Vice President and General Counsel retained the outside attorney recommended by the Board member. When the outside attorney sent an employee to OISS and

³ Kim Trent (elected 2012), Chair; Marilyn Kelly (elected 2014), Vice Chair; Bryan C. Barnhill II (elected 2018); Michael Busuito (elected 2016); Mark Gaffney (elected 2016); Anil Kumar (elected 2018); Sandra Hughes O’Brien (elected 2012); Dana Thompson (elected 2014).

asked for a signature on a document to be submitted to renew the employee's visa, the Board member called OISS and demanded that an OISS employee immediately sign the document.

The OISS employee had been allowed no time to review the document and insisted that she needed time to review before signing on behalf of the University. The Board member reportedly raised her voice and insisted that the papers be signed right away. The Board member also demanded that OISS employees keep her updated with respect to this employee's immigration status, demanded the employment termination of the Director of OISS, and demanded the Office be transferred from under the Provost's office to the Office of General Counsel.

During her interview as part of this investigation, the Board member denied any improper interference, but admitted she personally called OISS regarding documents to be signed. The Board member said the employee's attorney called and asked her to personally contact OISS. The totality of the information received about this situation indicates that the Board member directly contacted OISS regarding the case, directed a University employee to immediately sign a document despite not having an opportunity to review it, and then due to her dissatisfaction with how the situation was handled, demanded the termination of the Director and that OISS be moved under the Office of General Counsel.

B. The Center for Latino/a and Latin American Studies

During the investigation, information was provided concerning another potential violation of Accreditation Criterion 2. In 2016, a Board member took action to reorganize the Center for Latino/a and Latin American Studies and its leadership, without involvement of the full Board of Governors or the President.

This Board member attempted to provide the Center's Assistant Director with a larger role in the Center's management and reduce the role of the Director. As part of this plan, the Board member removed the Assistant Director from his regular duties at the Center, without the permission of his supervisor, to participate in meetings with upper-level administrators and to gather information for the Board member. The Board member involved the Assistant Director, but not the Director, in a plan to reorganize the Center. Witnesses recall that the Board member went so far as to spread rumors that the Director was incompetent and personally asked members of Detroit's Latino/a community to pressure the University's provost to replace the Director with the Assistant Director. The Assistant Director reportedly told the Director and the Center's former director that this Board member was his friend and contact and they would need to find their own.

The Board member succeeded in presenting a plan that would have put the Assistant Director in charge of student services and a substantial scholarship fund, the heart of the Center's

activities. The Director would have handled a smaller and less visible portfolio of responsibilities to include curriculum and faculty affairs, and he would have been forced to seek outside funding to maintain his salary because a portion of his salary would have been diverted to the Assistant Director. When the Latino/a community learned of the plan to reorganize the Center and take away the Director's leadership of the Center's most important functions, the reaction was negative. The Board member's efforts to reorganize the Center ultimately failed.

The Board member also met with the Center's Director regarding the Center's budget. During the conversation, the Board member instructed the Director that he should request more funding, even though the budget had already been approved. The Director believed the budget was fair and sufficient and declined to do what the Board member directed.

Based on the information provided during the course of the investigation, we conclude the Board member worked directly with an employee three levels subordinate to the President of the University in an attempt to reorganize the Center for Latino/a and Latin American Studies and change its leadership. In addition, she coached the Director to protest his Center's approved budget, despite his professional opinion that it was fair and sufficient.

C. Office of Internal Audit

In 2018, administrators within the University raised concerns about financial aid awarded to student athletes. To comply with NCAA regulations, the University must properly count all financial aid provided to athletes and ensure the limits are not exceeded. Any mistakes in this area can lead to compliance issues with the NCAA and are highly sensitive. The University's Auditor was tasked with investigating the issue and launched an internal audit.

During the audit, a Board member reportedly approached the Auditor after a meeting and demanded that she be able to preview any reports to the NCAA. The Board member also told the Auditor to keep their conversation private and not share it with President Wilson. The Board member reportedly said "I don't want anything going to the NCAA without my review and without me conducting interviews." The Board member also reportedly used an expletive to refer to a University administrator, saying that administrator "is not going to mess everything up and I'll tell Roy [President Wilson] that." She stated the issue was not the Athletic Director's fault.

When interviewed, the Board member admitted she immediately called the Athletic Director to ask what was going on when she first learned about the potential financial aid issue with student-athletes. However, she denies telling the Auditor that the issue was not the fault of the Athletic Director and denies asking to keep their conversation a secret from President Wilson. During her interview, she said she spoke to the Auditor just to make sure that all sides were being interviewed.

Based on the information provided by the University's Auditor and the administrators to which the Auditor reported her conversation with the Board member, we conclude the Board member's direct outreach to the Athletic Director and discussion with the Auditor were inappropriate and violated the spirit of Accreditation Criterion 2. We also conclude that her behavior did not prevent the Auditor from conducting a fair and thorough audit.

D. The Vice President of Health Affairs

In early 2019, the Board communicated to University President Roy Wilson that a majority of its members wanted the Vice President of Health Affairs removed from his position. Wilson asked for additional time so he could plan for someone else to cover the Vice President's duties and the Board postponed its vote. Before the Board's next meeting, President Wilson had already communicated to the Vice President that his employment with the University would end on March 31 when his current contract ended. At the next Board meeting, Wilson informed the Board of his action with respect to the Vice President.

The majority of the Board was not satisfied with Wilson's action and voted to direct Wilson to terminate the Vice President's employment effective immediately—not at the end of his contract. The Board majority further directed Wilson to provide the Board with a one-sentence letter effectuating the immediate termination of employment. A member of the Board threatened that she would go directly to the School of Medicine and the media to "set the record straight" if Wilson did not follow the Board's directive within 24 hours. The same member instructed the campus police chief to arrest the Vice President if he came to campus after his employment was terminated.

We conclude the Board was likely within its authority to advise the President to end the employment of the Vice President of Health Affairs, given the Vice President's high-level position within the University's leadership. However, we draw a distinction between the decision to remove the Vice President and the decision regarding how to end that employment. The Board interfered with decisions properly delegated to the President when it directed how and when the Vice President would be removed from his employment. The determination of how to end the employment relationship should have been delegated to the University's administrative head, President Roy Wilson.

E. Interference with other Employment Relationships

Several witnesses reported that the Board member referenced in all the preceding paragraphs repeatedly threatens to have University administrators terminated from employment or states administrators should be removed. Reportedly, this Board member has demanded that specific administrators be terminated from their positions, often because she did not agree with

actions they took in performance of their duties. For example, she demanded the provost's termination of employment because she blamed him for the departure of a dean. This conduct by this Board member likely affects the way these administrators perform the day-to-day duties of their positions.

II. Conclusion

Based on the concerns identified in the complaints to the Commission and those identified during the investigation, the investigators find the above-described conduct likely violates Criterion 2. However, the conduct above is attributed to a single Board member, not the Board as a whole, and the Board member's efforts to interfere in the day-to-day management of the institution have been largely unsuccessful. In contrast to the Board member at issue, most of the Board members expressed a clear understanding of their role, in compliance with Accreditation Criterion 2.

To ensure a healthy and effective Board of Governors, a course correction is necessary. Board members must understand how to govern themselves to effectively serve within the standards required by the State of Michigan, the Higher Learning Commission, and in the best interest of the University as a whole. This Board's particular challenge is that there is no simple way for the Board or for an outside authority to regulate the Board or remove a member and appoint a replacement. The Board, on its own, must bring itself into compliance in order to carry out its duties.

The University asked us to recommend remedial actions if our findings showed conduct likely in violation of Accreditation Criterion 2. Therefore, the following recommendations are provided:

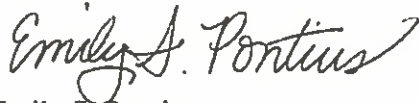
1. The Board should adopt a Code of Conduct for all members elected to its membership. The Code should prescribe guidelines for behavior within the Higher Learning Commission's Accreditation Criteria and include a process for censure when conduct violates the Code.
2. The Board should participate in ongoing training with respect to the University's Accreditation Criteria and its responsibilities.
3. Individual Board members who have interfered in day-to-day management of the institution should participate in training with the Association of Governing Boards (AGB) or a comparable resource.

Finally, the investigators recognize that this report is being submitted during a time of upheaval within the Board of Governors. The Board recently rejected a long-negotiated arrangement to partner with Henry Ford Medical Center and the public comments by board

Mr. Louis Lessem
September 3, 2019
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members have been divisive. Four board members recently filed a lawsuit in response to board action taken in their absence. Our purpose in providing this report is not to take a position on the merits of any substantive positions taken by Board members or the Board as a whole. All Board members interviewed seemed sincere in their desire to do what was best for the University and move forward. We hope this report will assist the Board in its efforts.

Sincerely,

A handwritten signature in cursive script that reads "Emily S. Pontius". The signature is written in black ink and is positioned above the printed name and contact information.

Emily S. Pontius
Attorney at Law
Direct Dial: 515.242.8914
Email: epontius@fredlaw.com

ESP:ajg

EXHIBIT A

Tuesday, April 16, 2019 at 4:00:54 PM Central Daylight Time

Subject: FW: Complaint Submitted - Wayne State U
Date: Tuesday, April 16, 2019 at 4:00:19 PM Central Daylight Time
From: Zach Waymer on behalf of Complaints

From:
Date: Wednesday, February 20, 2019 at 1:39 PM
To: Complaints <complaints@hlcommission.org>
Subject: Complaint Submitted

Contact Information

Complainant type: Staff member
Current or former, if applicable: Current staff member
Date of last attendance/employment, if applicable:
Program of study, if applicable:
Degree program level, if applicable:
Referred by: Other I am aware of the HLC through our recent accreditation process.

Complaint Details

Institution: 1373 - Wayne State University - MI
Date that matter of complaint occurred: 02/01/2019
Attempted to file a complaint with the institution: No
Description, if yes:
Attempted to address issue outside of institution: No
Description, if yes:
Related Criteria: Criterion 2. Integrity: Ethical and Responsible Conduct
Reason and issues leading to complaint:

It was noted in our accreditation report that it was unclear whether the Board of Governors "consistently delegates the day-to-day management of WSU to the administration in practice." This concern has since grown into a far worse situation - a dysfunctional Board where certain members attempt to engage in operations, and a president who is hampered in his ability to lead the institution. One particular governor, Sandra O'Brien, consistently and openly questions the competence of the president, most of his Cabinet members and a number of lower level employees. She has openly discussed her wish to fire employees, including a number of VP's. She forced a Board vote to immediately fire a VP, David Hefner, though the president had already dismissed him consistent with contractual obligations (after pressure from the BOG). When she and another board member learned the president had already dismissed Hefner, they demanded the president provide the Board with a note dismissing him from campus immediately, which she threatened

to share with the press, while also asking the chief of police to prohibit his presence on campus. This same governor has inserted herself into an investigation for potential NCAA athletics compliance issues, suggesting to the WSU Audit AVP that she wanted to discuss this with the AVP privately, without notifying the president, and suggesting that she wished the Athletic Director (a favorite of the governor) to be cleared of suspicion and the investigation refocused on the AVP of Enrollment, whom she stated was incompetent in this area. She then called the AVP of Enrollment and, in a manner the AVP interpreted as threatening, said they needed to speak. She blamed the provost for the resignation of a dean (a favorite of the governor), in an insulting and public manner. She has demanded that the Board approve interim dean appointments, which is not within BOG purview. She inserted herself into an issue with a faculty visa issue and then asked that the organizational structure be changed and the director of the Office of International Students and Services be fired. This member has created a block of four governors (herself included) that has stalled (and perhaps permanently damaged) the president's primary strategic program concerning WSU health sciences (Medicine, Nursing, Pharmacy) and a clinical partner health system. This program, the president feels strongly, is necessary for the health and future of the School of Medicine and the university. The four board members wish instead to purchase the Detroit Medical Center at an approximate cost of \$2 -3 billion (which we do not have) from a for-profit company (Tenet Healthcare -- with whom we have a highly adversarial relationship and who has no clear intention of selling). These board members have begun a war in the press that has attempted to hurt the president's reputation and is definitely hurting the university's reputation. Employees are concerned, and some fear for their career futures as this public fight continues.

Release of Information and FERPA Statement

I consent to allowing HLC to share my complaint with an outside organization, but do not consent to the disclosure of identifying information. If my complaint is shared with an outside organization, my personal information must be redacted.

Acknowledgement of Complaints Policy and Process

Check the box to confirm the statement above.*

The information contained in this communication is confidential and intended only for the use of the recipient named above, and may be legally privileged and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please resend it to the sender and delete the original message and copy of it from your computer system. Opinions, conclusions and other information in this message that do not relate to our official business should be understood as neither given nor endorsed by the organization.

Subject: FW: Complaint Submitted - Wayne State University
Date: Tuesday, April 16, 2019 at 3:54:16 PM Central Daylight Time
From: Zach Waymer on behalf of Complaints

From:
Date: Monday, February 25, 2019 at 5:26 PM
To: Complaints <complaints@hlcommission.org>
Subject: Complaint Submitted

Contact Information

Complainant type: Staff member

Current or former, if applicable: Current staff member

Date of last attendance/employment, if applicable:

Program of study, if applicable:

Degree program level, if applicable:

Referred by: My college or university

Complaint Details

Institution: 1373 - Wayne State University - MI

Date that matter of complaint occurred: 12/15/2018

Attempted to file a complaint with the institution: Yes

Description, if yes: yes, with certain Board members (please see the statement below).

Attempted to address issue outside of institution: No

Description, if yes:

Related Criteria: Criterion 2. Integrity: Ethical and Responsible Conduct

Reason and issues leading to complaint:

The HLC has reason to be concerned that the Wayne State University Board of Governors is not "consistently delegate(ing) the day-to-day management of WSU to the administration." I can attest that such delegation is not occurring. Certain Board members that I will characterize as rogue actors have second-guessed management decisions, intervened with staff, and threatened, cajoled, and intimidated employees below the level of the President, Vice Presidents, and Deans (e.g., associated vice presidents and chairs). In my 30+ years of dealing with university boards, I have witnessed some Boards lock horns with University Presidents. But never have I witnessed rogue board members acting with personal agendas and vendettas to reach around leadership, consistently and maliciously violating the University's chain of command and its own approved code of board conduct. It is my observation that many of their actions are undermining university leadership's ability to lead and compromising the best interests of the University.

As an example of their personal animus, one rogue board member over the past 12 months has sent threatening texts and emails demanding that I be fired immediately. When the President refused, the rogue members inserted language in his renewal contract demanding he take this action. Again, he refused. This demand was ultimately withdrawn from the President's contract, but the board member has not relented in his personal attacks on me in the face of the President's support. One AVP was called by this member at 9 p.m. and harangued by replaying events related to me and assuring the AVP that the "Board's actions with personnel were not over," implying that either he and/or the University President were being targeted. In addition, this particular board member called the board member of an outside health system, misrepresenting facts and announcing the university board's intention to take action against me.

Another rogue member (then Board Chair) inappropriately called an outside consultant engaged by the President, demanding the release of private and confidential LOI (letter of intent) information involved in ongoing negotiations (voicemail recording available on request). This demand was made despite an agreement by the full Board that private and confidential information would not be shared, due to concerns about untimely media leaks. The Board Chair was already in possession of a printed copy of the materials and had led the Board in voting 8-0 to move forward with the LOI. Despite this, she felt compelled to use a "show-of-force" tone in issuing her demand. Her actions were clearly calculated and totally inappropriate, violating the norms of Board governance.

All in all, these overreaches by certain board members have had a profound impact on the President who has shared with me and his cabinet that the Board's actions have undermined his ability to lead and may lead to his resignation. This outcome would be a tragedy for this University which has suffered through 20+ years of blurred governance -- and this is the first president with the temerity and integrity to intervene.

Release of Information and FERPA Statement

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